

GROUNDWATER RECHARGE AND RECOVERY**ACT AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Groundwater Recharge and Recovery Act.

Highlighted Provisions:

This bill:

- defines terms;
- requires the state engineer to give 60-days notice to a recharge or recovery permittee of the date to submit proof of completion;
- requires proof of completion of a recharge or recovery project;
- requires, if certain requirements are met, the state engineer to issue a certificate for a recharge or recovery project;
- authorizes the state engineer to waive certain filings;
- requires the permittee to file the certificate with the county recorder;
- establishes that a certificate is prima facie evidence of the right to the water as specified in the certificate; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3b-102, as enacted by Laws of Utah 1991, Chapter 146

73-3b-103, as enacted by Laws of Utah 1991, Chapter 146

73-3b-105, as last amended by Laws of Utah 2008, Chapter 382

73-3b-106, as enacted by Laws of Utah 1991, Chapter 146

- 32 **73-3b-201**, as last amended by Laws of Utah 2009, Chapter 183
 33 **73-3b-202**, as enacted by Laws of Utah 1991, Chapter 146
 34 **73-3b-203**, as enacted by Laws of Utah 1991, Chapter 146
 35 **73-3b-204**, as last amended by Laws of Utah 2009, Chapter 183
 36 **73-3b-205**, as enacted by Laws of Utah 1991, Chapter 146
 37 **73-3b-206**, as last amended by Laws of Utah 2007, Chapter 136
 38 **73-3b-208**, as last amended by Laws of Utah 2008, Chapter 282

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40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **73-3b-102** is amended to read:

42 **73-3b-102. Definitions.**

43 As used in this chapter:

44 (1) "Artificially recharge" means to place water ~~[underground]~~ in an aquifer:

45 (a) by means of:

46 (i) injection[;];

47 (ii) surface infiltration[;]; or

48 (iii) other method; and

49 (b) for the purposes of:

50 (i) storing the water; and

51 (ii) recovering the water.

52 (2) "Division" means Division of Water Rights.

53 (3) "Recharge permit" means a permit issued by the state engineer to ~~[inject water into~~
 54 ~~an underground aquifer for the purpose of storing the water.]~~ construct and operate a recharge
 55 project.

56 (4) "Recharge project" means to artificially recharge water into an aquifer.

57 ~~[(4)] (5)~~ "Recovery permit" means a permit issued by the state engineer to ~~[withdraw~~
 58 ~~from an underground aquifer water that has been injected and stored in the aquifer pursuant to~~
 59 ~~a recharge permit.]~~ construct and operate a recovery project.

60 (6) "Recovery project" means to withdraw from an aquifer water that has been
 61 artificially recharged pursuant to a recharge permit.

62 Section 2. Section **73-3b-103** is amended to read:

73-3b-103. Prohibitions.

(1) A person may not artificially recharge ~~[a groundwater]~~ an aquifer without first obtaining a recharge permit.

(2) A person may not recover from ~~[a groundwater]~~ an aquifer water that has been artificially recharged unless ~~[he]~~ the person first obtains a recovery permit.

(3) A person holding a recharge permit or recovery permit may not operate a ~~[groundwater]~~ recharge project or recovery project in a manner that is inconsistent with the permit conditions set by the state engineer.

Section 3. Section **73-3b-105** is amended to read:

73-3b-105. Administrative procedures.

The administrative procedures applicable to the issuance, modification, suspension, or revocation of a recharge ~~[and]~~ permit or recovery ~~[permits]~~ permit are those set forth in Title 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and 73-3-15.

Section 4. Section **73-3b-106** is amended to read:

73-3b-106. Water right for recharged water -- Change of use of recovered water.

(1) A person proposing to artificially recharge water into an ~~[underground]~~ aquifer must have:

(a) a valid water right for the water proposed to be recharged; or

(b) an agreement to use the water proposed to be recharged with a person who has a valid water right for the water proposed to be recharged.

(2) A person who holds a recovery permit may use or exchange recovered water only in the manner in which the water was permitted to be used or exchanged before the water was ~~[stored underground]~~ artificially recharged, unless a change or exchange application is filed and approved pursuant to Section 73-3-3 or 73-3-20, as applicable.

Section 5. Section **73-3b-201** is amended to read:

73-3b-201. Application for a recharge permit -- Required information -- Filing fee.

(1) The application for obtaining a ~~[groundwater]~~ recharge permit shall include the following information:

- 93 (a) the name and mailing address of the applicant;
- 94 (b) the name of the groundwater basin or groundwater sub-basin in which the applicant
- 95 proposes to operate the recharge project;
- 96 (c) the name and mailing address of the owner of the land on which the applicant
- 97 proposes to operate the recharge project;
- 98 (d) a legal description of the location of the proposed recharge project;
- 99 (e) the source and annual quantity of water proposed to be [~~stored underground~~
- 100 artificially recharged;
- 101 (f) evidence of a water right or an agreement to use the water proposed to be [~~stored~~
- 102 underground] artificially recharged;
- 103 (g) the quality of the water proposed to be [~~stored underground~~] artificially recharged
- 104 and the water quality of the receiving [~~groundwater~~] aquifer;
- 105 (h) evidence that the applicant has applied for all applicable water quality permits;
- 106 (i) a plan of operation for the proposed recharge [~~and recovery~~] project, which shall
- 107 include:
- 108 (i) a description of the proposed recharge project;
- 109 (ii) its design capacity;
- 110 (iii) a detailed monitoring program; and
- 111 (iv) the proposed duration of the recharge project;
- 112 (j) a copy of a study demonstrating:
- 113 (i) the area of hydrologic impact of the recharge project;
- 114 (ii) that the recharge project is hydrologically feasible;
- 115 (iii) that the recharge project will not:
- 116 (A) cause unreasonable harm to land; or
- 117 (B) impair any existing water right within the area of hydrologic impact; and
- 118 (iv) the percentage of anticipated recoverable water;
- 119 (k) evidence of financial and technical capability; and
- 120 (l) any other information that the state engineer requires.
- 121 (2) (a) A filing fee must be submitted with the application.
- 122 (b) The state engineer shall establish the filing fee in accordance with Section
- 123 63J-1-504.

Section 6. Section **73-3b-202** is amended to read:

73-3b-202. Issuance of recharge permit -- Criteria -- Conditions.

The state engineer:

(1) shall issue a ~~[groundwater]~~ recharge permit if:

(a) the applicant has:

(i) the technical and financial capability to construct and operate the recharge project;

and

(ii) (A) a valid water right for the use of the water proposed to be ~~[stored underground]~~ artificially recharged; or

(B) an agreement to use the water proposed to be ~~[stored underground]~~ artificially recharged with a person who has a valid water right for the use of the water proposed to be artificially recharged; and

(b) the project:

(i) is hydrologically feasible;

(ii) will not cause unreasonable harm to land;

(iii) will not impair any existing water right within the area of hydrologic impact; and

(iv) will not adversely affect the water quality of the aquifer;

(2) shall condition any approval on acquiring the applicable water quality permits prior to construction and operation of the recharge project; and

(3) may attach to the permit any ~~[conditions he determines are]~~ condition the state engineer determines is appropriate.

Section 7. Section **73-3b-203** is amended to read:

73-3b-203. Proof of completion, certification, or lapse of recharge permit.

(1) Sixty days before the date on which the recharge permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.

(2) (a) Before the date on which the recharge permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include:

(i) the location and description of the recharge works constructed;

(ii) the water source for the water artificially recharged and where the water is delivered for artificial recharge;

(iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from the water source described in Subsection (2)(a)(ii);

(iv) the method of artificially recharging the water; and

(v) any other information the state engineer requires.

(b) The state engineer may waive the filing of a map, a profile, or drawing if in the state engineer's opinion the written proof of completion adequately describes the construction and the nature and extent of the recharge project.

(c) The completed proof shall conform to a rule established by the state engineer.

(3) A [groundwater] recharge permit will lapse if the [recharge project is not completed] proof of completion of the recharge project's construction is not submitted to the state engineer within five years from the date of the permit application's approval, unless:

(a) the applicant requests an extension of time to complete the [project] recharge project's construction; and

(b) the state engineer approves the [request] extension of time.

(4) (a) The state engineer shall issue a recharge certificate if the recharge permittee has demonstrated to the state engineer's satisfaction that:

(i) a recharge project is perfected in accordance with the recharge permit; and

(ii) the water is being artificially recharged.

(b) The recharge certificate shall include:

(i) the name and post-office address of the recharge permittee;

(ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be recharged;

(iii) the name of the water source from which the water to be artificially recharged is diverted; and

(iv) other information that defines the extent and conditions of the recharge permit.

(c) A recharge certificate issued for a recharge permit need show no more than the facts shown in the proof of completion.

(d) (i) The state engineer shall:

(A) retain and file one copy of the recharge certificate; and

(B) delivery one copy of the recharge certificate to the recharge permittee.

(ii) A recharge permittee shall file the recharge certificate with the county recorder of

186 the county in which the water is recharged.

187 (e) The recharge certificate issued and filed under this section is prima facie evidence
188 of the recharge permittee's right to the artificially recharged water for the purpose, at the place,
189 and during the time specified in the recharge certificate.

190 Section 8. Section **73-3b-204** is amended to read:

191 **73-3b-204. Application for a recovery permit -- Required information.**

192 ~~[(1) If a person intends to recharge and recover water, the recovery application and~~
193 ~~permit may be filed and processed with the groundwater recharge application and permit.]~~

194 (1) A person may file a recovery permit application with a recharge permit application.

195 (2) The application for obtaining a recovery permit shall include the following
196 information:

197 (a) the name and mailing address of the applicant;

198 (b) a legal description of the location of the existing well or proposed new well from
199 which the applicant intends to recover ~~[stored]~~ artificially recharged water;

200 (c) a written consent from the owner of the recharge permit if the applicant does not
201 hold the recharge permit;

202 (d) the name and mailing address of the owner of the land from which the applicant
203 proposes to recover ~~[stored]~~ artificially recharged water;

204 (e) the name or description of the artificially recharged groundwater aquifer which is
205 the source of supply;

206 (f) the purpose for which the ~~[stored]~~ artificially recharged water will be recovered;

207 (g) the depth and diameter of the existing well or proposed new well;

208 (h) a legal description of the area where the ~~[stored]~~ artificially recharged water is
209 proposed to be used;

210 (i) the design pumping capacity of the existing well or proposed new well; and

211 (j) any other information including maps, drawings, and data that the state engineer
212 requires.

213 (3) (a) A filing fee must be submitted with the application.

214 (b) The state engineer shall establish the filing fee in accordance with Section
215 63J-1-504.

216 Section 9. Section **73-3b-205** is amended to read:

73-3b-205. Issuance of recovery permit -- Criteria -- Conditions.

The state engineer:

(1) shall issue the recovery permit if ~~[he]~~ the state engineer determines that:

(a) the proposed recovery of ~~[stored]~~ artificially recharged water will not impair any existing water right;

(b) the applicant ~~[of the]~~ is the holder of an approved recharge permit or recovery permit, or if ~~[he]~~ the applicant does not hold the recharge permit, has a valid agreement with the owner of the recharge permit to divert and use the recovered water; and

(c) the recovery point of diversion is located within the area of hydrologic impact of the recharge project, as determined by the state engineer; and

(2) may attach to the permit any conditions ~~[he]~~ the state engineer determines are appropriate.

Section 10. Section **73-3b-206** is amended to read:

73-3b-206. Proof of completion, certification or lapse of recovery permit.

(1) Sixty days before the date on which the recovery permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.

(2) (a) Before the date on which the recovery permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include documentation and a map prepared by a Utah licensed land surveyor or Utah licensed professional engineer that shows:

(i) the location and description of the recovery works constructed;

(ii) the method of recovering the artificially recharged water;

(iii) the facilities in place to recover and deliver the recovered water; and

(iv) the purpose and place of use of the recovered water.

(b) The state engineer may waive the filing of a map, profile, or drawing if in the state engineer's opinion the written proof of completion adequately describes the works and the nature and extent of the recovery project.

(c) The completed proof shall conform to a rule established by the state engineer.

(3) A recovery permit will lapse if the recovery project is not completed within five years from the date of the recovery permit application's approval unless:

(a) the applicant requests an extension of time to complete the recovery project; and

(b) the state engineer approves the [request] extension of time.

(4) (a) The state engineer shall issue a recovery certificate if the recovery permittee has demonstrated to the state engineer's satisfaction that:

(i) the recovery project is perfected in accordance with the recovery permit; and

(ii) water is being recovered.

(b) The recharge certificate shall include:

(i) the name and post-office address of the recharge permittee;

(ii) the works used to recover and deliver recovered water; and

(iii) other information that defines the extent and conditions of the recovery permit.

(c) A recovery certificate issued for a recovery permit need show no more than the facts shown in the proof of completion.

(d) A recovery certificate issued under this section does not extend the rights described in the recovery permit.

(e) (i) The state engineer shall:

(A) retain and file one copy of the recovery certificate; and

(B) delivery one copy of the recovery certificate to the recovery permittee.

(ii) A recovery permittee shall file the recovery certificate with the county recorder of the county in which the water is recovered.

(f) The recovery certificate issued and filed under this section is prima facie evidence of the recovery permittee's right to the recovered water for the purpose, at the place, and during the time specified in the recovery certificate.

Section 11. Section **73-3b-208** is amended to read:

73-3b-208. Proposed new well -- Compliance with water well construction rules.

An applicant for a recharge permit or recovery permit who intends to construct a new well to recharge or recover [stored] artificially recharged water must comply with Sections 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of water wells.